

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1738

Citations Affected: IC 14-25-2; IC 35-43-1-5; IC 35-45-3-2.

Synopsis: Water resources. Conference committee report for EHB 1738. Provides that the natural resources commission (commission) may not contract with a person to: (1) provide the person with certain minimum quantities of stream flow; or (2) sell water to the person; from reservoir impoundments financed by the state unless the department of natural resources (DNR) and the advisory council follow certain procedures, including providing notice of the proposed contract and holding public meetings on the proposed contract. Requires a person holding an existing contract with the commission for water from the reservoir to provide notice of the request to any water utility or other person to whom it sells water for resale. Requires each water utility or other person that receives notice to in turn provide notice of the request to any water utility or other person to whom it sells water for resale. Specifies that for purposes of the statute making poisoning a public water supply a Class B felony, a person must act with the intent to cause serious bodily injury. Provides that for purposes of the statute making it a Class A infraction to litter in, on, or within 100 feet of a body of water under the jurisdiction of the: (1) DNR; or (2) U.S. Army Corps of Engineers; a judgment of not more than \$1,000 (rather than a judgment of at least \$1,000, as in current law) may be imposed. Requires the water resources study committee (committee) to study and make findings and recommendations concerning: (1) current processes and methods for water resource allocation and distribution in Indiana; and (2) appropriate policies governing future water resource allocation and distribution planning in Indiana. Requires the committee to report its findings and recommendations to the legislative council not later than November 1, 2007. **(This conference committee report does the following: (1) Requires: (A) a person holding a contract with the DNR to obtain water from a reservoir; and (B) a water utility or another person that purchases water for resale; to provide notice of a request made to use water from the reservoir to any water utility or other person to whom it in turn sells water for resale. (2) Allows the DNR to publish notice of the request and the public hearing on the matter in: (A) at least one newspaper of general circulation in the required counties; and (B) in any qualified publications or additional newspapers to provide supplementary notification to the public. (3) Amends provisions from SEA 286-2007 concerning the offenses of: (A) poisoning a public water supply; and (B) littering in, on, or within 100 feet of a body of water under the jurisdiction of the DNR or the U.S. Army Corps of Engineers.)**

Effective: Upon passage; July 1, 2007.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1738 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Page 1, delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning water
- 3 resources.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 14-25-2-2 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) Except as
- 7 provided in section 8 of this chapter **and subject to section 2.5 of this**
- 8 **chapter**, the commission may contract with a person for the provision
- 9 of certain minimum quantities of stream flow or for the sale of water on
- 10 a unit pricing basis. A contract for the provision of minimum stream
- 11 flows or for the sale of water on a unit pricing basis:
- 12 (1) must be executed by the commission; and
- 13 (2) is subject to approval by the following:
- 14 (A) The attorney general.
- 15 (B) The governor.
- 16 (C) The person desiring the use.
- 17 (b) A contract entered into under this chapter may not cover a
- 18 period of more than fifty (50) years.
- 19 (c) Before the submission of the contract to the governor for
- 20 approval, the commission shall submit a copy of the contract to the
- 21 department. The department shall, within twenty (20) days of receipt,
- 22 do the following:

(1) Prepare a memorandum relative to the effect that the contract might have on recreational facilities.

(2) Submit the memorandum to the governor for the governor's consideration.

SECTION 2. IC 14-25-2-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. (a) As used in this chapter, "water utility" means:**

(1) a public utility (as defined in IC 8-1-2-1(a));

(2) a municipally owned utility (as defined in IC 8-1-2-1(h));

(3) a not-for-profit utility (as defined in IC 8-1-2-125(a));

(4) a cooperatively owned corporation;

(5) a conservancy district established under IC 14-33; or

(6) a regional water district established under IC 13-26;

that provides water service to the public.

(b) A person that seeks to contract with the commission for the provision of certain minimum quantities of stream flow or the sale of water on a unit pricing basis under section 2 of this chapter must submit a request to the commission and the department. The commission shall not make a determination as to whether to enter into a contract with the person making the request until:

(1) the procedures set forth in this section have been followed; and

(2) the commission has reviewed and considered each report submitted to the commission under subsection (i).

(c) Not later than thirty (30) days after receiving a request under subsection (b), the department shall provide, by certified mail, written notice of the request to the following:

(1) Each person with whom the commission holds a contract for:

(A) the provision of certain minimum quantities of stream flow; or

(B) the sale of water on a unit pricing basis;

as of the date of the request.

(2) The executive and legislative body of each:

(A) county;

(B) municipality, if any; and

(C) conservancy district established under IC 14-33, if any;

in which the water sought in the request would be used.

(3) The executive and legislative body of each:

(A) county;

(B) municipality, if any; and

(C) conservancy district established under IC 14-33, if any;

in which the affected reservoir is located.

(d) Not later than seven (7) days after receiving a notice from the department under subsection (c), each person described in subsection (c)(1) shall, by certified mail, provide written notice of the request to each:

(1) water utility; or

(2) other person;

that contracts with the person described in subsection (c)(1) for the

purchase of water for resale. Each person to whom notice is mailed under this subsection is in turn responsible for providing written notice by certified mail to each water utility or other person that purchases water from that person for resale. A water utility or another person required to provide notice under this subsection shall mail the required notice not later than seven (7) days after it receives notice of the request from the water utility or other person from whom it purchases water for resale.

(e) At the same time that:

(1) a person described in subsection (c)(1); or

(2) a water utility or another person described in subsection (d);

mails any notice required under subsection (d), it shall also mail to the department, by certified mail, a list of the names and addresses of each water utility or other person to whom it has mailed the notice under subsection (d).

(f) In addition to the mailed notice required under subsection (c), the department shall publish notice of the request, in accordance with IC 5-3-1, in each county:

(1) in which a person described in section (c)(1) is located;

(2) in which the affected reservoir is located;

(3) in which the water sought in the request would be used; and

(4) in which a water utility or other person included in a list received by the department under subsection (e) is located.

Notwithstanding IC 5-3-1-6, in each county in which publication is required under this subsection, notice shall be published in at least one (1) general circulation newspaper in the county. The department may, in its discretion, publish public notices in a qualified publication (as defined in IC 5-3-1-0.7) or additional newspapers to provide supplementary notification to the public. The cost of publishing supplementary notification is a proper expenditure of the department.

(g) A notice required to be mailed or published under this section must:

(1) identify the person making the request;

(2) include a brief description of:

(A) the nature of the pending request;

(B) the process by which the commission will determine whether to enter into a contract with the person making the request; and

(3) set forth the date, time, and location of the public meeting required under subsection (h); and

(4) in the case of a notice that is required to be mailed under subsection (c)(1) or (d), a statement of the recipient's duty to in turn provide notice to any:

(A) water utility; or

(B) other person;

that purchases water for resale from the recipient, in accordance with subsection (d).

(h) The advisory council established by IC 14-9-6-1 shall hold a

public meeting in each county in which notice is published under subsection (f). A public meeting required under this subsection must include the following:

(1) A presentation by the department describing:

(A) the nature of the pending request; and

(B) the process by which the commission will determine whether to enter into a contract with the person making the request.

(2) An opportunity for public comment on the pending request.

The advisory council may appoint a hearing officer to assist with a public meeting held under this subsection.

(i) Not later than thirty (30) days after a public meeting is held under subsection (h), the advisory council shall submit to the commission a report summarizing the public meeting.

SECTION 3. IC 35-43-1-5, AS ADDED BY SEA 286-2007, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) A person who, with the intent to cause serious bodily injury, tampers with a:

(1) water supply;

(2) water treatment plant (as defined in IC 13-11-2-264); or

(3) water distribution system (as defined in IC 13-11-2-259);

commits tampering with a water supply, a Class B felony. However, the offense is a Class A felony if it results in the death of any person.

(b) A person who recklessly, knowingly, or intentionally poisons a public water supply **with the intent to cause serious bodily injury** commits poisoning, a Class B felony.

SECTION 4. IC 35-45-3-2, AS AMENDED BY SEA 286-2007, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) A person who recklessly, knowingly, or intentionally places or leaves refuse on property of another person, except in a container provided for refuse, commits littering, a Class B infraction. However, the offense is a Class A infraction if the refuse is placed or left in, on, or within one hundred (100) feet of a body of water that is under the jurisdiction of the:

(1) department of natural resources; or

(2) United States Army Corps of Engineers.

Notwithstanding IC 34-28-5-4(a), a judgment of ~~at least~~ **not more than** one thousand dollars (\$1,000) shall be imposed for each Class A infraction committed under this section.

(b) "Refuse" includes solid and semisolid wastes, dead animals, and offal.

(c) Evidence that littering was committed from a moving vehicle other than a public conveyance constitutes prima facie evidence that it was committed by the operator of that vehicle.

SECTION 5. [EFFECTIVE UPON PASSAGE] (a) **As used in this SECTION, "committee" refers to the water resources study committee established by IC 2-5-25-1.**

(b) **The committee shall study and make findings and recommendations concerning the following:**

(1) **Current processes and methods used in determining water**

- 1 **resource allocation and distribution in Indiana.**
- 2 **(2) Appropriate policies governing future water resource**
- 3 **allocation and distribution planning in Indiana.**
- 4 **(c) The committee shall report its finding and recommendations**
- 5 **to the legislative council in an electronic format under IC 5-14-6**
- 6 **not later than November 1, 2007.**
- 7 **SECTION 4. An emergency is declared for this act.**
 (Reference is to EHB 1738 as printed March 30, 2007.)

Conference Committee Report
on
Engrossed House Bill 1738

Signed by:

Representative Welch
Chairperson

Senator Gard

Representative Koch

Senator Simpson

House Conferees

Senate Conferees